

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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IN RE:

February 23, 2004

PETITION OF ATMOS ENERGY
CORPORATION FOR APPROVAL OF
GAS TRANSPORTATION
AGREEMENT WITH THE
GOODYEAR TIRE AND RUBBER
COMPANY

DOCKET NO.
03-00540

PETITION TO COMMENCE A CONTESTED CASE
AND TO INTERVENE

The Tennessee Regulatory Authority Energy and Water Division Staff ("Staff") hereby submit this Petition to Commence a Contested Case and to Intervene ("Petition") pursuant to Tenn. Code Ann. § 65-2-107 and TRA Rules 1220-1-2-.03, 1220-1-2- 21 and 1220-1-2- 22

Background

On September 30, 2003 Atmos Energy Corporation ("Atmos") filed the *Petition of Atmos Energy Corporation for Approval of Gas Transportation Agreement with the Goodyear Tire and Rubber Company* (the "*Atmos Petition*") seeking Authority approval of a special contract (the "Contract") Atmos has negotiated with The Goodyear Tire and Rubber Company ("Goodyear") to provide natural gas transportation service for Goodyear's facility located in Union City, Tennessee The *Atmos Petition* is based on representations by Atmos that it has been notified by Goodyear of Goodyear's intent to bypass the distribution system currently used by Atmos to supply Goodyear The proposed bypass would purportedly be achieved through the installation of a direct pipeline connection between Goodyear's Union City facility and the CMS Trunkline

Gas Company pipeline which is located approximately three miles from Goodyear's Union City facility

A copy of a cost analysis and feasibility study (the "Study") of the proposed pipeline is attached to the *Atmos Petition*. The *Atmos Petition* describes the study as containing highly sensitive and confidential trade secrets and competitive information and states that the study has been submitted with the understanding of Atmos that it will only be made available to the Directors of the Authority and appropriate Authority staff. The *Atmos Petition* also states that the study has been submitted with the understanding that it will not be disseminated on the TRA website nor disclosed to any third party without prior written authorization from Atmos. A copy of the Contract is also attached to the *Atmos Petition* upon the same conditions of confidentiality.

On October 9, 2003 Staff filed a data request seeking information related to the *Atmos Petition* and the Contract. On October 22, 2003 Atmos filed a response to Staff's October 9, 2003 data request. The response was submitted with the same understanding and upon the same conditions as the Study and the Contract, i.e., that the response would be made available only to the Directors and necessary Authority staff. On November 6, 2003, Atmos filed a supplemental response to the October 9, 2003 data request. The supplemental response was submitted upon the same conditions regarding confidentiality as the other filings referenced above.

Grounds

Staff offers the following grounds in support of this Petition:

1. The *Atmos Petition* is a conditional filing which, by its terms, prevents the Authority from proceeding with the review of this matter and is therefore incomplete. The Study which forms the basis of the *Atmos Petition*, and the two responses to Staff data requests, have also been submitted with conditions the Authority, by law, may not accept. Thus the *Atmos Petition*

has not been received by the Authority in a manner upon which the Authority may utilize the information contained therein and discharge its duty to review special contracts pursuant to TRA Rule 1220-4-1- 07. The *Atmos Petition* states the understanding of Atmos that the Contract which forms the basis of this Docket and which is subject to review and approval pursuant to TRA Rule 1220-4-1-.07 as well as the Study offered by Atmos in support of the Contract have each been submitted “in a sealed envelope with the understanding that the envelope will be opened only by the directors of the TRA and the appropriate staff members of the TRA, and that the information will not be disseminated on the TRA website nor disclosed to any third party without prior written authorization from Atmos.”¹ All subsequent filings by Atmos in this Docket up to the date of this *Petition* have been submitted upon the same conditions. These conditions can not be reconciled with the Authority’s responsibility to make such records “open for personal inspection by any citizen of Tennessee” pursuant to the Public Records Act of the State of Tennessee.²

2. Staff is of the belief that there exists a genuine need to offer some level of protection to the information characterized as commercially sensitive in the *Atmos Petition*. Notwithstanding the Authority’s responsibilities under the Public Records Act and its statutory inability to accept the conditions placed upon the filings made by Atmos in this Docket thus far, a contested case may be commenced pursuant to TRA Rule 1220-1-2.02(1)³ and Staff may be permitted to intervene pursuant to Tenn Code Ann § 65-2-107⁴ and TRA Rules 1220-1-2-.21(3) and 1220-1-

¹ *Atmos Petition*, pp 2-3 (September 30, 2003)

² See Tenn Code Ann § 10-7-503 (Supp 2003)

³ TRA Rule 1220-1-2- 02 states

(1) The Authority may commence a contested case at any time with respect to any matter within its jurisdiction

⁴ Tenn Code Ann § 65-2-107 states

All persons having a right under the provisions of the laws applicable to the authority to appear and be heard in contested cases as defined in this chapter shall be deemed parties to such

2-22(2)⁵ If such an intervention is granted, Staff, as a party, will have the ability to assent to the conditions placed upon the filings made by Atmos in this Docket through a protective order which would afford Atmos the protection it seeks while preserving Staff's ability to review the Contract, the Study and any other information received or developed by Staff during the course of this Docket

3. As a result of the last rate case brought before the Tennessee Public Service Commission by the United Cities Gas Company⁶ in TPSC Docket 95-02258, the profits realized by Atmos from the provision of natural gas transportation services to Goodyear are specifically excluded from the base rates of Atmos and are instead refunded to the other customers of Atmos in Tennessee. Atmos makes annual filings with the Authority which account for the refunds. A reduction in the rates charged to Goodyear by Atmos will necessarily result in a reduction of the above-referenced profit margins. A reduction in these profit margins will necessarily result in an immediate increase in cost for all other customers of Atmos in Tennessee because reduced profit margins result in reduced refunds. If Goodyear elects to bypass the natural gas distribution system of Atmos altogether and construct its own pipeline, then the other customers of Atmos in Tennessee will see an even greater increase in cost because the above-referenced profit margins and corresponding refunds will be eliminated.

proceedings for the purposes of this chapter. In addition, the authority may upon motion allow any interested person to intervene and become a party to any contested case.

⁵ TRA Rule 1220-1-2- 21(3) states

(1) In any other contested case proceeding, designated staff members, represented by the general counsel or other counsel employed by the Authority, may participate as a party.

TRA Rule 1220-1-2- 22(2) states

In any contested case the Authority or the Hearing Officer

(1) May, on its own motion or the motion of any party, allow amendments, consolidate cases, join parties, sever aspects of the case for separate hearings, permit additional claims or contentions to be asserted, bifurcate or otherwise order the course of proceedings in order to further the just, efficient and economical disposition of cases consistent with the statutory policies governing the Authority.

⁶ The United Cities Gas Company has since been acquired by Atmos.

4 Despite the significant effect this Docket could have on the costs incurred by the other customers of Atmos in Tennessee, no other person has, as of the date of this Petition, sought to intervene in this Docket

5. The publicly stated mission of the Tennessee Regulatory Authority is to promote the public interest by balancing the interests of utility consumers and providers while facilitating the transition to a more competitive environment


6 Given the legitimate need to offer some level of protection for the commercially sensitive information Staff requires for review of this matter, given the Authority's publicly stated interest in balancing the interests of consumers and providers, and given the lack of an intervention by another party, it is appropriate to allow Staff to intervene as a party

WHEREFORE, based on the above-stated grounds the Tennessee Regulatory Authority Energy and Water Division Staff request that

1. The Hearing Officer enter an order convening a contested case in this Docket and permitting the Tennessee Regulatory Authority Energy and Water Division Staff to intervene in this Docket as a party

2 The Chairman of the Authority identify the appropriate staff members who will function as parties to this Docket to all other interested parties and staff so as to prevent ex parte communications

Respectfully submitted,

A handwritten signature in cursive script, reading "Randal L. Gilliam", is written over a horizontal line.

Randal L. Gilliam, BPR# 017375
Staff Counsel
Tennessee Regulatory Authority

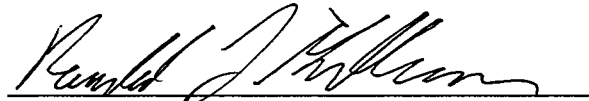
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the persons listed below via first class mail, hand delivery or facsimile on February 23, 2004

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A handwritten signature in black ink, appearing to read "Randal L. Gilliam", is written over a horizontal line.

Randal L Gilliam, Staff Counsel
Tennessee Regulatory Authority